

Docket No. 210,271

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish on January 6, 1997.

Claimant appeals from a decision by the Administrative Law Judge denying both temporary total disability and medical benefits.

This is the second appeal from a preliminary hearing order in this case. Following a hearing held on October 31, 1996, the Administrative Law Judge found that claimant had failed to sustain his burden of proving his asthma arose out of and in the course of his employment with respondent. By Order dated December 27, 1996, the Appeals Board reversed that finding and remanded the claim for further proceedings. On January 6, 1997, the Administrative Law Judge entered the Order which is the subject of this appeal. The appealed Order denies claimant's request for temporary total disability benefits, reserved decision on outstanding medical until the final award, and denied the request to name Dr. Doornbos as the authorized treating physician. On appeal, respondent argues that the Appeals Board does not have jurisdiction to review the findings in the second preliminary Order. Respondent asserts that the decision by the Administrative Law Judge is in a finding that claimant is not temporarily totally disabled and is not in need of medical treatment. The Board does not, according to respondent, have jurisdiction. Claimant's counsel, on the other, hand argues that the Administrative Law Judge has failed to comply with the Board's remand order and argues that claimant is entitled to preliminary hearing benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds and concludes as follows:

The Appeals Board agrees it does not have jurisdiction at this time to review the findings that claimant is not entitled to temporary total disability benefits and the decision to reserve judgement on the outstanding medical until the final award. That order denying medical benefits is remanded for a statement of the reason or basis for the denial.

The Appeals Board has jurisdiction only to review allegations that the Administrative Law Judge exceeded his jurisdiction. K.S.A. 44-551. The Order by the Administrative Law Judge does not state any reason for the decision entered. As the Board has previously indicated, when benefits are denied, the Board may be unable to determine whether the Board has jurisdiction when the order does not state the reason for the denial. The Board has, on that basis, remanded preliminary hearings with requests that the Administrative Law Judge indicate the reason for denial. In this case the record indicates the claimant is continuing to work, and it appears the remand for the basis of denying temporary total benefits would be unnecessary. Also, the decision to reserve judgement on outstanding medical is clearly a matter within the Administrative Law Judge's discretion and does not represent a jurisdictional issue. The reason for denying medical treatment is not, however, clear from the record. There were, for example, jurisdictional issues regarding timeliness of claim which were raised at the time of the original hearing. Since the decision by the Administrative Law Judge does not state a reason for denying medical benefits, the Appeals Board concludes that the claim must be remanded as to that question only. The Appeals Board requests that the Administrative Law Judge state the reason for denying medical treatment so that the Board can determine whether the basis for denial is jurisdictional and subject to review.

WHEREFORE, the Appeals Board concludes that the Order of Administrative Law Judge Jon L. Frobish dated January 6, 1997, should remain in effect as originally entered with the exception that the order denying ongoing medical treatment is remanded to the Administrative Law Judge with the request that he state the reasons for denying those benefits.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

c: Brian D. Pistonik, Wichita, KS
Frederick L. Haag, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director